

42 JS 44 (Rev. 12/07) (cand rev 1-16-08)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON PAGE TWO OF THE FORM.)

I. (a) PLAINTIFFS

Theadora King

(3) 305 BY J. K.

**(b) County of Residence of First Listed Plaintiff
(EXCEPT IN U.S. PLAINTIFF CASES)**

(c) Attorney's (Firm Name, Address, and Telephone Number)

Shana E. Scarlett, Hagens Berman Sobol Shapiro LLP, 715 Hearst Ave., Ste. 202, Berkeley, CA 94710; Steve W. Berman, Hagens Berman Sobol Shapiro LLP, 1301 5th Ave., Ste. 2900, Seattle, WA 98101; Elizabeth A. Fegan, 820 N. Blvd., Ste. B, Oak Park, IL 60301

DEFENDANTS

Safeway Inc.

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

Viviann C. Stapp (Bar No. 233036), Latham & Watkins LLP, 505 Montgomery Street, Suite 2000, San Francisco, California 94111
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II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- | | |
|--|---|
| <input type="checkbox"/> 1 U.S. Government Plaintiff | <input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) |
| <input type="checkbox"/> 2 U.S. Government Defendant | <input checked="" type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III) |

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

PTF	DEF	PTF	DEF
<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4 <input checked="" type="checkbox"/> 4
<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5 <input type="checkbox"/> 5
<input type="checkbox"/> 3	<input checked="" type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6 <input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input checked="" type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability PERSONAL PROPERTY <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury—Med. Malpractice <input type="checkbox"/> 365 Personal Injury—Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Torts Product Liability <input type="checkbox"/> 290 All Other Real Property	REAL PROPERTY <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/ Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	CIVIL RIGHTS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))
			IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus – Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609
				<input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

- | | | | | | | |
|--|--|--|---|---|---|---|
| <input type="checkbox"/> 1 Original Proceeding | <input checked="" type="checkbox"/> 2 Removed from State Court | <input type="checkbox"/> 3 Remanded from Appellate Court | <input type="checkbox"/> 4 Reinstated or Reopened | <input type="checkbox"/> 5 another district (specify) _____ | <input type="checkbox"/> 6 Multidistrict Litigation | <input type="checkbox"/> 7 Judge from Magistrate Judgment |
|--|--|--|---|---|---|---|

Transferred from

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. 1332(d) (Class Action Fairness Act)**VI. CAUSE OF ACTION**Brief description of cause:
Plaintiff claims Defendant sold milk labelled as "organic" that was not actually organic.**VII. REQUESTED IN COMPLAINT:**

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$

CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No**VIII. RELATED CASE(S) IF ANY**

PLEASE REFER TO CIVIL L.R. 3-12 CONCERNING REQUIREMENT TO FILE "NOTICE OF RELATED CASE". See L.R. 3-12 Notice filed instanter.

**IX. DIVISIONAL ASSIGNMENT (CIVIL L.R. 3-2)
(PLACE AND "X" IN ONE BOX ONLY)** SAN FRANCISCO/OAKLAND SAN JOSE

SIGNATURE OF ATTORNEY OF RECORD

DATE
2/19/2008

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5
6 Attorney for Defendant Safeway Inc.

7
8
9 **UNITED STATES DISTRICT COURT FOR THE**
10 **NORTHERN DISTRICT OF CALIFORNIA**
11 **SAN FRANCISCO DIVISION**

12
13
14 THEADORA KING, individually, and
on behalf of those similarly situated,

CASE NO:

EDL

15 Plaintiff, CV **08** **0999**

16
17 v.

**SAFEWAY INC.'S
NOTICE OF REMOVAL**

18 SAFEWAY INC.,

19 Defendant.

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1 Defendant Safeway Inc. (“Safeway”), by its counsel, hereby gives notice of
2 removal of this action, pursuant to 28 U.S.C. §§ 1332, 1441, 1446 and 1453, from
3 the Superior Court of the State of California for the County of Alameda to the
4 United States District Court for the Northern District of California.

I. BACKGROUND

6 1. On January 11, 2008, Plaintiff Theadora King ("Plaintiff") filed a
7 class action complaint in the Superior Court of the State of California for the
8 County of Alameda styled *King, et al. v. Safeway Inc.*, Case No. RG08365602.
9 Plaintiff personally served Safeway on January 17, 2008. A true copy of the
10 Complaint is attached hereto as Exhibit 1.

11 2. The Complaint asserts violations of Cal. Bus. & Prof. Code §§ 17200
12 et seq. (Unfair Competition Law), 17500 et seq. (False Advertising) and Civil
13 Code §§ 1750 et seq. (Consumer Legal Remedies Act), along with breach of
14 warranty, negligent misrepresentation and unjust enrichment claims. See Compl.,
15 Ex. 1 hereto, at ¶¶ 40-72 The Complaint alleges that Safeway marketed organic
16 milk produced by Aurora Dairy Corporation that purportedly did not meet the
17 standards of organic certification under federal law, including the Organic Foods
18 Production Act of 1990 (“OFPA”), 7 U.S.C. § 6501 et seq., and its implementing
19 regulations, 7 C.F.R. Part 205. See id. at ¶¶ 23-32. Plaintiff filed her Complaint
20 after several other class actions were filed with substantially the same allegations.
21 See Local Rule 3-13 Notice of Pendency of Other Actions or Proceedings, Ex. 2
22 hereto, and filed concurrently with this Notice of Removal.

II. GROUNDS FOR REMOVAL

24 3. Plaintiff's claims are removable because the Class Action Fairness
25 Act ("CAFA") provides this Court with jurisdiction.¹ See 28 U.S.C. §§ 1332(d),

²⁶ Due to the “necessarily federal” nature of Plaintiff’s Complaint, alternate
27 grounds for removal may also exist, namely federal question jurisdiction based on
28 principles of complete preemption. See 28 U.S.C. § 1331; see also, e.g., *Franchise Tax Board of Cal. v. Construction Laborers Vacation Trust for Southern Cal.*, 463

1 1453. CAFA extends federal jurisdiction over class actions where: (1) any
 2 member of the proposed class is a citizen of a state different from any defendant
 3 (*i.e.*, minimal diversity exists); (2) the putative class consists of more than 100
 4 members; and (3) the amount in controversy is \$5 million or more, aggregating all
 5 claims and exclusive of interests and costs. See 28 U.S.C. §§ 1332(d)(2),
 6 1332(d)(5)(B).² Each of these requirements is readily met here. See disc. *infra* at
 7 2-5.

8 **A. Minimal Diversity**

9 4. Plaintiff defines her proposed class as “[a]ll persons in the State of
 10 California who purchased organic milk or milk products from Safeway during the
 11 time period of December 5, 2003 through October 15, 2007.” See Compl., Ex. 1
 12 hereto, at ¶ 33. Plaintiff’s class definition does not restrict the class to California
 13 citizens. See id. Courts, in turn, have held that substantially identical class
 14 definitions support the existence of minimal diversity. See 28 U.S.C.
 15 § 1332(d)(2)(A); McMorris v. TJX Companies, Inc., 493 F. Supp. 2d 158, 162-64
 16 (D. Mass. 2007); Larsen v. Pioneer Hi-Bred Intern., Inc., No. 4:06-cv-0077-JAJ,
 17 2007 WL 3341698, at *4-5 (S.D. Iowa Nov. 9, 2007).

18 5. In addition, Plaintiff is a citizen of the State of California. See
 19 Compl., Ex. 1 hereto, at ¶ 11. Safeway is a Delaware corporation with its principal
 20 place of business in the State of California and, thus, is a dual citizen of Delaware
 21 and California. See 28 U.S.C. § 1332(c)(1). Because Safeway is a Delaware

22
 23 (...continued)
 24 U.S. 1 (1983). Safeway plainly has independent grounds for removal under CAFA
 25 and, thus, has not raised preemption principles at this time as a basis for removal.
 26 See 28 U.S.C. §§ 1332(d), disc. *infra* at 2-5. Safeway, however, reserves the right
 27 to raise issues of complete preemption, as well as the applicability of other
 preemption principles, in support of a motion to dismiss at the appropriate time.

2 2 A “class action” includes any civil action filed under Federal Rule of Civil
 Procedure 23 or “similar State statute or rule of judicial procedure.” See 28 U.S.C.
 28 § 1332(d)(1)(B).

1 citizen and Plaintiff is a California citizen, minimal diversity exists. See 28 U.S.C.
 2 § 1332(d)(2)(A); Hart v. FedEx Ground Package System Inc., 457 F.3d 675, 676
 3 (7th Cir. 2006) (recognizing the Class Action Fairness Act requires only minimal
 4 diversity under Article III of the Constitution); Grupo Dataflux v. Atlas Global
 5 Group, L.P., 541 U.S. 567, 578 n.6 (2004) (“We understand “minimal diversity” to
 6 mean the existence of at least one party who is diverse in citizenship from one
 7 party on the other side of the case, even though the extraconstitutional “complete
 8 diversity” required by our cases is lacking. It is possible...that one can have
 9 opposing parties in a two-party case who are co-citizens, and yet have minimal
 10 Article III jurisdiction because of the multiple citizenship of one of the parties.”).

11 6. However, out of an abundance of caution, Safeway submits the
 12 declaration of Laura A. Donald attesting to facts supporting that it is more probable
 13 than not that at least one potential class member exists that is not a citizen of
 14 California. See Donald Decl., Ex. 3 hereto, at ¶¶ 3, 5. Safeway has many stores in
 15 California which are close to, or encroach upon, the borders of other states. See id.
 16 at ¶ 5. These stores obtained organic milk supplied by Aurora through Safeway’s
 17 distribution center in California, and citizens of other states purchase organic milk
 18 from these stores. See id. Thus, it is more probable than not that at least one class
 19 member exists who was a “person[] in the State of California who purchased
 20 organic milk or milk products from Safeway” but who was not a California citizen.
 21 See id. at ¶¶ 3, 5; Compl., Ex. 1 hereto, at ¶ 33. Consequently, minimal diversity
 22 exists under the Class Action Fairness Act. See 28 U.S.C. § 1332(d)(2)(A).

23 **B. Number Of Class Members**

24 7. Plaintiff brings this case on behalf of “[a]ll persons in the State of
 25 California who purchased organic milk or milk products from Safeway during the
 26 time period of December 5, 2003 through October 15, 2007.” See Compl., Ex. 1
 27 hereto, at ¶ 33. In addition, Plaintiff alleges “that the Class consists of many

1 thousands of persons.” See id. at ¶ 34. Therefore, the requirement of CAFA that
 2 the putative class consist of more than 100 members is readily satisfied. See 28
 3 U.S.C. § 1332(d)(5)(B).

4 **C. Amount In Controversy**

5 8. The amount in controversy exceeds \$5 million. Plaintiff has expressly
 6 plead that she seeks injunctive relief as well as “actual, compensatory, punitive,
 7 and exemplary damages,” and Plaintiff demands that Safeway disgorge the benefit
 8 realized as a result of Plaintiff and other Class members purchasing organic milk
 9 that was purportedly not properly classified as organic under federal law. See
 10 Compl., Ex. 1 hereto, at ¶¶ 54-59, Prayer for Relief. Specifically, the Complaint
 11 defines the “benefit” received by Safeway as the “prices Plaintiff and the other
 12 Class members paid” for organic milk and milk products during the proposed Class
 13 Period (i.e., December 5, 2003 through October 15, 2007). See id. at ¶ 54.
 14 Moreover, Plaintiff alleges that Safeway sold organic milk and milk products
 15 produced by Aurora Dairy Corporation (“Aurora”) that purportedly was not
 16 “organic” as defined by federal law. See Compl., Ex. 1 hereto, at ¶¶ 23-32.

17 9. Safeway sold more than \$5 million worth of Aurora organic milk in
 18 California during the Class Period, as measured by the retail price potential class
 19 members would have paid. See Donald Decl., Ex. 3 hereto, at ¶¶ 2, 4; Compl., Ex.
 20 1 hereto, at ¶ 54. Thus, the amount in controversy in this case exceeds the
 21 statutory requirement of \$5 million. See 28 U.S.C. § 1332(d)(2).

22 10. Plaintiff bears the burden of showing that an exception to CAFA
 23 jurisdiction applies. See, e.g., Serrano v. 180 Connect, Inc., 478 F.3d 1018, 1021-
 24 22 (9th Cir. 2007). No such exception, however, applies here. See id. at 1022-23.

25 **III. COMPLIANCE WITH THE REMOVAL
 STATUTE AND LOCAL RULES**

26 11. The Notice of Removal was properly filed in the United States
 27 District Court for the Northern District of California, because the Superior Court of
 28

1 the State of California for the County of Alameda is located in this judicial district.
 2 See 28 U.S.C. § 1441(a).

3 12. Pursuant to Local Rule 3-5, assignment of this case to the San
 4 Francisco Division is appropriate. The Complaint purports to assert claims that
 5 allegedly arose throughout the State of California. See, e.g., Compl., Ex. 1 hereto,
 6 at ¶¶ 14-33. Thus, assignment to the San Francisco Division is proper under Local
 7 Rule 3-2(c). See also Local Rules 3-2(b), 3-2(d).

8 13. The Notice of Removal is signed pursuant to Rule 11 of the Federal
 9 Rules of Civil Procedure. See 28 U.S.C. § 1446(a).

10 14. Plaintiff personally served Safeway on January 17, 2008. See
 11 Summons and Proof of Service, Ex. 4 hereto. Accordingly, this Notice of Removal
 12 is timely under 28 U.S.C. § 1446(b), as it is filed within 30 days of service. See
 13 id.; F. R. Civ. P. 6(a).

14 15. Consent to federal jurisdiction is not necessary given that the basis for
 15 federal jurisdiction is CAFA. See 28 U.S.C. § 1453(b) (“A class action may be
 16 removed to a district court of the United States in accordance with section
 17 1446...except that such action may be removed by any defendant without the
 18 consent of all defendants.”).

19 16. Pursuant to Local Rule 3-13, Safeway has filed with its Notice of
 20 Removal as Exhibit 2 a Notice of Pendency of Other Actions or Proceedings.

21 17. Pursuant to 28 U.S.C. § 1446(a), a copy of all process, pleadings and
 22 orders served upon Safeway in this action, which papers include the Complaint and
 23 Summons, are attached. See Exs. 1, 4 hereto.

24 18. Pursuant to 28 U.S.C. § 1446(d), a copy of this Notice of Removal is
 25 being served upon counsel for Plaintiff and a copy, along with a Notice of Filing of
 26 the Notice of Removal, is being filed with the Clerk of the Superior Court of the
 27 State of California for the County of Alameda.

1 **IV. CONCLUSION**

2 For the foregoing reasons, Safeway respectfully requests that this Court
3 exercise jurisdiction over this action and enter orders and grant relief as may be
4 necessary to secure removal and to prevent further proceedings in this matter in the
5 Superior Court of the State of California for the County of Alameda. Safeway
6 further requests such other and further relief as the Court deems appropriate.

7

8 Dated: February 19, 2008

Respectfully submitted,

9

10

COUNSEL FOR DEFENDANT
SAFEWAY INC.

11

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By:



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Safeway Inc.'s Notice of Removal

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FILED
ALAMEDA COUNTY

JAN 11 2008

CLERK OF THE SUPERIOR COURT
BY Paula O'Neil Deputy

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13 || Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

17 THEADORA KING, individually and on behalf)
18 of all others similarly situated,)

No. 408365602

19 Plaintiff

CLASS ACTION COMPLAINT

20 v

CLASS ACTION COMPLAINT

21 | SAFeway INC

CLASS ACTION COMPLAINT

22 Defendant }

JURY TRIAL DEMANDED

ORIGINAL

1 Plaintiff Theadora King, by counsel, individually and on behalf of all others similarly
2 situated ("Plaintiff") tenders the following Class Action Complaint and Demand for Jury Trial:

3 **I. OVERVIEW**

4 1. This class action and representative action seeks relief on behalf of Plaintiff and the
5 members of the Class for injuries sustained by them as a result of Safeway, Inc.'s ("Safeway")
6 deceptive marketing of milk as organic when the milk is not, in fact, organic and Safeway's
7 increase in gross sales and sales price.

8 2. During the Class Period, Defendant, which is one of the largest food and drug
9 retailers in North America, violated its duty to inform customers that the "O"-label organic milk is
10 not organic. Defendant's nondisclosure of this material fact constitutes misrepresentation, unfair,
11 unlawful, fraudulent, and/or deceptive business practices in violation of California's consumer
12 protection laws. The materiality of this information is proven directly by federal and state
13 regulations which, at all relevant times, required Defendant to inform consumers that milk that they
14 were purchasing was not organic. Defendant flagrantly violated and, in some cases, continue to
15 violate these regulations.

16 3. As a result of Defendant's misbranding, concealment and nondisclosure, customers
17 are misled to purchase the organic milk and/or to pay a greater price than they would otherwise
18 pay. Defendant has been unjustly enriched at the expense of these consumers.

19 4. This is a class action and a representative action brought by Plaintiff, who purchased
20 organic milk from Defendant in the State of California during the Class Period.

21 **II. JURISDICTION AND VENUE**

22 5. This Court has subject-matter jurisdiction over this representative action pursuant to
23 Bus. & Prof. Code §§ 17204 and 17535. This Court has personal jurisdiction over the parties
24 because Plaintiff submits to the jurisdiction of the Court and Defendant Safeway, Inc.'s principal
25 place of business is located in Pleasanton, California, and a substantial portion of the wrongdoing
26 alleged in this Complaint took place in California, so as to render the exercise of jurisdiction over it
27 by California courts permissible under traditional notions of fair play and substantial justice.

8. This litigation may not removed to federal court under 28 U.S.C. § 1332 as amended by the Class Action Fairness Act of 2005, because the members of the Plaintiff Class are citizens of the same state, California, as Defendant. *See* 28 U.S.C. § 1332(d)(2)(A). Further, Plaintiffs assert no federal question and/or violations of federal law.

9. Venue is proper in this Court pursuant to Bus. & Prof. Code §§ 17204 and 17535 and Civ. Code § 1780 (c) because Defendant conducts business in the County of Alameda and in the State of California, including marketing, advertising, and sales directed to California residents. Further, at all times mentioned in this Complaint, Defendant made misrepresentations and material omissions to residents of the County of Alameda and the State of California.

10. The amount in controversy exceeds the jurisdictional minimum of this Court.

III. PARTIES

11. Plaintiff Theadora King is a resident of Alameda County, California and a citizen of the State of California. Plaintiff purchased the store-brand organic milk from Defendant Safeway at its stores in California on numerous occasions throughout the class period. This milk was produced by Aurora Dairy Corp. and branded as a private label brand by Safeway. Plaintiff utilized the organic milk produced and sold by Defendant for her own and her family's own consumption. Plaintiff decided to purchase "organic" milk, and indeed paid a premium price for that "organic" milk, because she believed that it contained fewer additives and was healthier for her consumption than non-organic milk.

12. Safeway is a Delaware corporation with its principal place of business in Pleasanton, California. Safeway is one of the largest food and drug retailers in North America. As of September 8, 2007, the company operated 520 stores in the State of California, which is more than one-third of its total stores nationwide.

13. Safeway sold its "organic" milk to Plaintiff and the Class under its store "O" brand. The "organic" milk was contained in cartons that specifically represented that the milk was certified organic milk, despite the fact that it was not organic. Aurora labels its purportedly organic milk with an organic certified label. This label is supposed to assure consumers that Aurora's milk complies with the Organic Foods Production Act of 1990 (7 U.S.C. §§ 6501, *et seq.*) and its

1 implementing regulations (7 C.F.R. Part 205). Plaintiff and the Class Members they represent pay
2 premium prices for Safeway's "organic" milk.

3 **IV. FACTUAL ALLEGATIONS**

4 **A. Market for Organic Milk**

5 14. Safeway is and has been selling milk or milk products that it represents to be
6 "organic," when, in fact, the milk is not organic throughout the time period of December 5, 2003
7 through October 15, 2007 ("class period" or "relevant time period"). Safeway sells this milk to
8 consumers directly using its own brand name "O."

9 15. The market for organic milk has boomed in recent years. According to the United
10 States Department of Agriculture ("USDA"), total milk or milk products production in the United
11 States in 2004 was 170 billion pounds. Fluid milk or milk products sales since 1975 have been
12 steady at approximately \$11 billion per year. Currently, organic fluid milk or milk products sales
13 represent about 18% of overall sales. In 2005, total organic dairy sales were approximately
14 \$2 billion. The organic dairy sector is annually growing at an approximate rate of 16%.

15 16. Consumers rely on manufacturers and sellers of milk or milk products to determine
16 what milk is in fact organic. As Aurora Dairy, from which Safeway obtained the milk labeled
17 under its "O" brand, expressly recognizes, "Organic certification is the public's assurance that
18 products have been grown and handled according to strict procedures without persistent toxic
19 chemical inputs." <http://www.auroraorganic.com/aodweb/site/itemcontent.aspx?icategoryid=6>.

20 **B. Organic Milk Standards**

21 17. The USDA has set forth four requirements that must be satisfied for milk to be
22 labeled as "USDA Organic": (a) the milk must not come from cows that have been treated with
23 Bovine Growth Hormone; (b) the milk must not come from cows that have been treated with
24 antibiotics; (c) the milk producing cows must only eat feed that has been grown without pesticides;
25 and (d) the milk must come from cows that have some "access to pasture."

26 18. In order to sell or label an agricultural product as organically produced, the product
27 must be produced and handled in compliance with the Organic Foods Production Act of 1990.

1 ("OPPA"), *see* 7 U.S.C. 6505(a)(1)(A), and the USDA adopted regulations, *see* 7 C.F.R. Part 205,
2 *et seq.*

3 **C. Safeway's Representations Concerning Its Organic Milk**

4 19. By marketing, selling, or otherwise representing that its milk was "organic,"
5 Safeway represented that the milk abides by these laws and regulations and that the milk is
6 "organic."

7 20. Specifically, Safeway included labels on its "O" brand milk that stated, in whole or
8 in part, as follows:

9 **Description :**

10 Organic Fat Free Milk

11 **Ingredients :**

12 Organic Grade A Fat Free Milk, Vitamin A Palmitate, Vitamin D3,

13 **Product Attributes :**

14 Organic

15 Kosher

16 FatFree

17 **Product Details :**

18 Ultra-Pasteurized Vitamins A & D added. USDA Organic. Grade A;
19 Ultra-Pasteurized; Homogenized. Organic from the Source. There's a
20 lot that goes into a good glass of milk. It starts with the land. Our
21 daily pastures are environmentally friendly, maintained with the use
22 of recognized organic horticultural practices. The dairy cows that
23 produce O Organics Milk enjoy a healthy mix of fresh air, plenty of
24 exercise, clean drinking water and a wholesome, 100% certified
25 organic diet - and they are not given growth hormones or treated
26 with antibiotics. All of these practices support sustainable farming,
27 which is good for the environment, good for the cows and good for
28 the milk. That's why our O Organics Milk tastes like milk should,
fresh and pure. To be certified organic, dairy cows must be managed
under organic livestock practices at least one year before milking.
Their feed must be grown on land that has been under organic
cultivation practices for a minimum of three years. Certified Organic

21. On the carton of Safeway's *O* Organics Milk is the following statement:

22 ORGANICS

23 *Organic from the Source*

24 There's a lot that goes into a good glass of milk. It starts with the
25 land. Our dairy pastures are environmentally friendly, maintained
26 with the use of recognized organic horticultural practices. The dairy
27 cows that produce *O* Organics Milk enjoy a healthy mix of fresh air,
28 plenty of exercise, clean drinking water and a wholesome, 100%
certified organic diet – and they are not given growth hormones or
treated with antibiotics.

1
2 All of these practices support sustainable farming, which is good for
3 the environment, good for the cows and good for the milk. That's
4 why our *O* Organics Milk tastes like milk should -- fresh and pure.

5 The carton also states:

6 ORGANICS
7 organic
8 Fat Free Milk
9 Vitamins A & D Added
Grade A • Pasteurized • Homogenized

10 "To be certified organic, dairy cows, must be managed under organic
11 livestock practices at least one year before milking. Their feed must
12 be grown on land that has been under organic cultivation practices
for a minimum of three years."

13 22. However, Safeway's milk was not organic according to Federal law. In fact,
14 Safeway's "organic" milk was produced in large scale factory farms and otherwise failed to
15 comport with Federal law and thus should not have been certified organic.

16 **D. The USDA's Investigation of Safeway's Supplier**

17 23. By marketing, selling, or otherwise representing that its milk was "organic," Costco
18 represented that the milk abides by the laws and regulations requiring certain conditions be met
19 before the milk is labeled "organic."

20 24. Aurora was formed by the former owners of Horizon, who sold Horizon to Dean
21 Foods. The sale left Aurora with thousands of milk cows. Aurora then started its Colorado
22 operation which produces 10 million gallons of milk a year. It is in essence a factory-farm model,
23 there is no opportunity for cows to graze, as depicted below:



1

2 25. Aurora's primary business is selling milk for use in the private-label milk market for
3 Safeway, Costco, Wild Oats and others.

4 26. However, Aurora's milk was not organic according to Federal law. In fact,
5 Aurora's "organic" milk was produced in large scale factory farms and otherwise failed to comport
6 with Federal law.

7 27. On March 7, 2007, the USDA identified the following "violations by Aurora
8 Organic Dairy," from which Safeway obtained the milk Safeway sold under its own labels, of
9 federal law:

10 a. From 2003 through 2006, for dairy animals at its Platteville, Colorado
11 facility, Aurora failed to provide a total feed ration that included pasture, failed to establish and
12 maintain pasture conditions appropriate for minimizing the occurrence and spread of diseases and
13 parasites, and failed to establish and maintain access to pasture, in willful violation of 7 C.F.R.
14 §§ 205.237(a), 205.238(a)(3), and 205.239(a)(2);
15

16 b. During the spring and early summer of 2006, Aurora entered conventional
17 dairy animals into organic milk or milk products production at its Dublin, Texas facility before
18 those animals completed the required one-year period of continuous organic management, in
19 willful violation of 7 C.F.R. § 205.236(a)(2);
20

21 c. From 2003 through 2006, Aurora purchased for its Platteville facility, from
22 Promiseland Livestock in Falcon, Missouri, dairy animals that had been converted from
23 conventional to organic milk or milk products production, and thus had not been under continuous
24 organic management from at least the last third of gestation, in willful violation of 7 C.F.R.
25 § 205.236(a)(2)(iii);
26

27 d. From on or about July 10, 2004 through on or about September 28, 2005,
28 Aurora moved organic dairy animals from its certified Platteville facility to Wells Ranch in Gill,

1 Colorado, a non-organic (non-certified) livestock operation for management, and thereafter
2 returned them to the Platteville facility for organic dairy production, in willful violation of 7 C.F.R.
3 § 205.236(b)(1);

4 e. From February 2005 through March 2006, Aurora moved organic calves
5 from its certified Platteville facility to non-organic (non-certified) livestock operations for
6 management, and eventually returned them to the Platteville facility for organic dairy production,
7 in willful violation of 7 C.F.R. §§ 205.236(a)(2)(iii) and 205.236(b)(1);

8 f. From 2003 through 2006, Aurora used non-organic agricultural products,
9 such as wheat straw and corn stalks, as bedding for organic dairy animals at its Platteville facility,
10 in willful violation of 7 C.F.R. § 205.239(a)(3);

11 g. From on or about July 27, 2004 through on or about September 30, 2005,
12 Aurora routinely caused organic dairy animals from Promiseland Livestock, a certified organic
13 dairy, to be delivered to Wells Ranch, a non-organic livestock operation, for livestock
14 management, before having them delivered to Aurora's Platteville facility for organic dairy
15 production, in willful violation of 7 C.F.R. § 205.236(b)(1);

16 h. From December 5, 2003 through at least September 7, 2007, Aurora sold,
17 labeled and represented its milk or milk products as being organically produced when such milk or
18 milk products were not produced and handled in accordance with the National Organic Program
19 regulations, in willful violation of 7 C.F.R. §§ 205.102, 205.200 and 205.400(a);

20 i. From on or about October 29, 2003 through on or about March 9, 2006,
21 Aurora failed to notify its certifying agent immediately concerning changes to the operation of its
22 Platteville facility regarding the termination and utilization of off-site facilities, such as Wells
23 Ranch, contracted by Aurora to provide pasture and/or livestock management services, in willful
24 violation of 7 C.F.R. § 205.400(f)(2);

1 j. Aurora failed to include a summary statement, supported by documentation,
2 in the December 29, 2004 and December 28, 2005 Organic System Plans for its Platteville facility
3 that detailed changes to the previous year's Organic System Plan regarding the termination and
4 utilization of off-site facilities, such as Wells Ranch, contracted by Aurora to provide pasture
5 and/or livestock management services, in willful violation of 7 C.F.R. § 205.406(a)(1)(i);
6

7 k. From 2004 through 2006, Aurora failed to maintain adequate records that
8 disclosed all activities and transaction in sufficient detail as to be readily understood and audited to
9 demonstrate compliance with the OFPA and the National Organic Program regulations concerning
10 pasture arrangements with operations identified by Aurora in its annual Organic System Plan for its
11 Platteville facility, in willful violation of 7 C.F.R. § 205.103(b);
12

13 l. In the October 29, 2003 and December 29, 2004 Organic System Plans for
14 its Platteville facility, Aurora failed to include a full description of the practices and procedures to
15 be performed by Wells Ranch, in willful violation of 7 C.F.R. § 205.201(a)(1);
16

17 m. In the December 28, 2005 Organic System Plan for its Platteville facility,
18 Aurora failed to include a full description of the practices and procedures to be performed by
19 Matsude Farms, Salazar, Cockroft Dairy Farm, and Ray-Glo Dairy, as at its Woodward facility, in
20 willful violation of 7 C.F.R. § 205.201(a)(1); and
21

22 n. In the October 29, 2003, December 29, 2004, and December 28, 2005
23 Organic System Plans for its Platteville facility, Aurora failed to include a full description of the
24 monitoring practices and procedures to be performed and maintained to verify that its Organic
25 System Plans were effectively implemented with respect to off-site operations contracted by
26 Aurora to provide pasture and/or livestock management services, in willful violation of 7 C.F.R.
27 § 205.201(a)(3).
28

1 28. On August 23, 2007, Aurora entered into a Consent Agreement with the USDA.
2 This Consent Agreement contained a stipulation for probation. The USDA found that Aurora had
3 not been in compliance with the federal organic food regulations, and placed it on a one year
4 probationary period. The Consent Agreement provided that Aurora was required to remove
5 organic dairy animals "currently present at Platteville that transitioned under the '80/20' rule" from
6 the plant, and instructed that such animals could only be utilized as conventional animals, not
7 certified organic animals. Finally, the Consent Agreement also requires Aurora to address all
8 issues that were raised in the Notice of Proposed Revocation in order for its organic certification
9 not to be revoked.

10 **E. Defendant's Illegal Conduct**

11 29. Safeway violated, and continues to violate federal and state law (including the
12 applicable regulations by selling its milk as "organic." By mislabeling the milk, Safeway has
13 misled, and continues to mislead Plaintiff and the Class Members into paying a higher price for
14 milk that cannot be sold as "organic."

15 30. The milk that Safeway sold was not organic, despite Defendant's misrepresentations
16 that the milk was, in fact, organic; in that Aurora and thus Safeway had failed to comply with the
17 requirements of the OFPA. *See* 7 C.F.R. §§ 205.102, *et seq.*, in at least the following ways:

18 a. Safeway represented its milk or milk products as "organic" when, in fact,
19 they were not, in willful violation of 7 C.F.R. § 205.102;

20 b. Aurora failed to maintain records concerning the production and handling of
21 milk or milk products intended to be sold, labeled, or represented as "organic" in a manner which
22 fully disclosed all activities and transactions of the certified operation in sufficient detail as to be
23 readily understood and audited, in willful violation of 7 C.F.R. § 205.103(b);

24 c. Aurora failed to provide its dairy cows with access to land used for livestock
25 grazing that it managed to provide feed value as required by 7 C.F.R. § 205.200;

26 d. Aurora, intending to sell, label or represent milk or milk products as
27 "organic," failed to comply with the applicable provisions of 7 C.F.R. § 205.200;

28

1 e. Aurora failed to maintain an accurate organic production or handling system
2 that includes a description of practices and procedures to be performed and maintained, including

3 the frequency with which they will be performed, in willful violation of 7 C.F.R. §205.201(a)(1);

4 f. Aurora failed to maintain an accurate organic production or handling system
5 that included a description of the monitoring practices and procedures to be performed and
6 maintained, including the frequency with which they will be performed, to verify that the plan is
7 effectively implemented, in willful violation of 7 C.F.R. § 205.201(a)(3);

8 g. Aurora, after an entire, distinct herd had been converted to organic
9 production, failed to maintain all cows under organic management from the last third of gestation,
10 in willful violation of 7 C.F.R. §205.236(a)(2)(iii);

11 h. Aurora removed its dairy cows from an organic operation and subsequently
12 managed those cows on a non-organic (non-certified) operation before being sold, labeled, or
13 represented as organically produced, in willful violation of 7 C.F.R. § 206.236(b)(1);

14 i. Aurora failed to provide its dairy cows with a total feed ration composed of
15 agricultural products, including pasture and forage, that are organically produced and, where
16 applicable, organically handled, in willful violation of 7 C.F.R. 205.238(a)(3);

17 j. Aurora failed to establish and maintain living conditions for its dairy cows
18 which accommodate their health and natural behavior, in willful violation of 7 C.F.R. § 205.239(a);

19 k. Aurora failed to establish appropriate housing, pasture conditions, and
20 sanitation practices for its dairy cows to minimize the occurrence and spread of diseases and
21 parasites, in willful violation of 7 C.F.R. § 205.238(a)(3);

22 l. Aurora failed to provide its dairy cows with suitable access to the outdoors,
23 shade, shelter, exercise areas, fresh air, and direct sunlight in willful violation of 7 C.F.R.
24 § 205.239(a)(1);

25 m. Aurora failed to provide its dairy cows with access to pasture in willful
26 violation of 7 C.F.R. § 205.239(a)(2);

1 n. Aurora failed to provide its dairy cows with appropriate clean, dry bedding,
 2 which complies with the feed requirements of § 205.237, in willful violation of 7 C.F.R.

3 § 205.239(a)(3);
 4 o. Aurora failed to provide shelter designed to allow for its dairy cows' natural
 5 maintenance, comfort behaviors, and the opportunity to exercise, as required by federal regulation;
 6 p. Aurora failed to comply with the Organic Food Production Act of 1990 and
 7 applicable organic production and handling regulations of 7 C.F.R. § 205.400(a);

8 q. Aurora failed to immediately notify its certifying agent concerning the
 9 application of a prohibited substance to its dairy cows, in willful violation of 7 C.F.R.
 10 § 205.400(f)(2); and

11 r. Aurora failed to submit to its certifying agent an updated organic production
 12 or handling system plan that included a summary statement, supported by documentation, detailing
 13 deviations from, changes to, modifications to, or other amendments made to the previous year's
 14 organic system plan during the previous year in willful violation of 7 C.F.R. § 205.406(a)(1)(i).

15 31. Defendant Safeway failed to conduct its own inspections and oversight to determine
 16 whether Aurora was complying with the laws and/or ignored Aurora's flagrant violations. Its
 17 representations about cows having a "healthy mix of fresh air, plenty of exercise," were blatantly
 18 false. Thus, despite the violations of federal law and regulations, Safeway marketed and sold the
 19 milk or milk products under the "O" brand representing that the milk was organic, when it was not.
 20 Defendant's conduct deceived Plaintiff and the Class Members into believing that they were
 21 purchasing organic milk when they were not.

22 32. Thus, Safeway directly misrepresented to Plaintiff and the Class Members that the
 23 "organic" milk it sold under its own label was certified organic, when it was not. Again, Plaintiff
 24 and the Class Members would not have purchased Safeway's milk, and paid the premium for
 25 Safeway's milk had they known that Safeway's milk was, in fact non-organic.

26
 27
 28

V. CLASS ACTION ALLEGATIONS

33. Plaintiff seeks certification of a state-wide Consumer Class defined as follows:

All persons in the State of California who purchased organic milk or milk products from Safeway during the time period of December 5, 2003 through October 15, 2007.

34. Plaintiff is informed and believes that the Class consists of many thousands of persons throughout the State of California, making individual joinder of all Class Members impracticable.

35. Questions of law and fact are common to the Plaintiff Class and predominate over questions affecting only individual member, including, *inter alia*, the following:

a. Whether the alleged conduct by Defendant violated laws as alleged in this Complaint;

b. Whether Defendant engaged in unfair, unlawful and/or fraudulent business practices by failing to disclose that the milk labeled as organic milk was not organic;

disclose that the milk labeled as organic milk was not organic;

induced into purchasing organic milk without adequate disclosures that the milk was not organic.

e. Whether Defendant violated California law, including the Unfair Competition Law (“UCL”), Cal. Bus. & Prof. Code §§ 17200, *et seq.*, §§ 17500, *et seq.*, and/or California’s Consumer Legal Remedies Act (“CLRA”), Cal. Civ. Code §§ 1750, *et seq.*

f. Whether Defendant made misrepresentations to Plaintiff and the members of the Class about milk labeled as organic;

g. Whether Plaintiff and the members of the Class are entitled to equitable and/or injunctive relief;

h. Whether Defendant's unlawful, unfair and/or deceptive practices harmed Plaintiff and the members of the Class; and

i. Whether Defendant was unjustly enriched by its deceptive practices

1 36. Plaintiff's claims are typical of the claims of the Class Members as described above;
2 the claims arise from the same course of conduct by Safeway and the relief sought is common.

3 37. Plaintiff will fairly and adequately represent and protect the interests of all Class
4 Members. Plaintiff is represented by counsel competent and experienced in both consumer
5 protection and class action litigation.

6 38. A class action is superior to other available methods for the fair and efficient
7 adjudication of this controversy, since joinder of all the individual Class members is impracticable.
8 Furthermore, because the damages suffered, and continued to be suffered, by each individual Class
9 member may be relatively small, the expense and burden of individual litigation would make it
10 very difficult or impossible for individual Class members to redress the wrongs done to each of
11 them individually and the burden imposed on the judicial system would be enormous.

12 39. In addition, the prosecution of separate actions by the individual Class members
13 would create a risk of inconsistent or varying adjudications with respect to individual Class
14 members, which would establish incompatible standards of conduct for defendants. In contrast, the
15 conduct of this action as a class action presents far fewer management difficulties, conserves
16 judicial resources and the parties' resources, and protects the rights of each Class member.

VI. CAUSES OF ACTION

FIRST CAUSE OF ACTION

VIOLATIONS OF THE CLRA

(Cal. Civ. Code §§ 1750, *et seq.*)

21 40. The preceding paragraphs of this Complaint are realleged and incorporated by
22 reference. Plaintiff asserts this claim for violations of the CLRA on behalf of herself and the
23 members of the Class.

24 41. Plaintiff and the members of the Class are consumers who purchase goods (food
25 products) from Defendant for personal, family, or household purposes.

26 42. Representing that goods (including food products) have approval, characteristics,
27 uses, or benefits which they do not have and advertising goods with intent not to sell them as

1 advertised constitute unfair or deceptive trade practices under the provisions of the CLRA, Cal.
2 Civ. Code §§ 1770(a)(5), (9), (14) and (17).

3 43. Plaintiff and the members of the Class have all been directly and proximately
4 injured by Defendant's conduct, and such injury includes the purchase of milk labeled as organic,
5 but which was not organic, that they would not have purchased were they truthfully and fully
6 informed of material facts concerning the fact that the milk was not organic.

7 44. Pursuant to Cal. Civ. Code § 1780(a), Plaintiff seeks an order enjoining Defendant
8 from engaging in the methods, acts, or practices alleged herein. Pursuant to Cal. Civ. Code § 1782,
9 if Defendant does not rectify its illegal acts within 30 days, Plaintiff intends to amend this
10 complaint to add claims for: a) actual damages; b) restitution of money to Plaintiff and class
11 members; c) punitive damages; d) attorneys' fees and costs; and e) other relief that this Court
12 deems proper.

SECOND CAUSE OF ACTION

FALSE AND MISLEADING ADVERTISING

(Cal. Bus. & Prof. Code §§ 17500, *et seq.*)

16 45. The preceding paragraphs of this Complaint are realleged and incorporated by
17 reference. Plaintiff asserts this claim for violations of Cal. Bus. & Prof. Code §§ 17500, *et seq.* on
18 behalf of himself and the members of the Class.

19 46. In violation of Section 17500, in connection with its sales of non-organic milk,
20 Defendant made or disseminated statements which are untrue or misleading, and which Defendant
21 knew (or by the exercise of reasonable care should have known) to be untrue or misleading.

22 47. As a result of the violations of California law alleged herein, Defendant has been,
23 and will be, unjustly enriched at the expense of Plaintiff, the members of the Class and the general
24 public. Specifically, Defendant has been unjustly enriched by their receipt of monies from
25 consumers who purchased milk labeled organic that was not organic which is advertised and/or
26 otherwise marketed in this State, and is promoted and sold by Defendant through advertising and
27 marketing materials containing the false and misleading statements alleged herein.

48. Pursuant to Cal. Bus. & Prof. Code § 17535, Plaintiff requests that this Court enter such orders or judgments as may be necessary to restore to any person in interest any money which may have been acquired by means of such unfair competition, and for such other relief as set forth below.

THIRD CAUSE OF ACTION

NEGLIGENCE MISREPRESENTATION

49. The preceding paragraphs of this Complaint are realleged and incorporated by reference. Plaintiff asserts this claim for negligent misrepresentation on behalf of himself and the members of the Class.

50. Defendant owed a duty to Plaintiff and members of the Class to exercise reasonable care in making representations about organic milk.

51. These representations were negligently and recklessly made to potential customers and the general public through uniform misbranding, concealment and non-disclosure, through mass media and point-of-sale advertising, and through other information prepared or disseminated by Defendant. As a direct and proximate result of these misrepresentations, omissions and concealment, Plaintiff and the Class members have been damaged in and amount to be proven at trial.

52. Defendant at all times knew that Plaintiff and the Class members relied (or should be presumed to have relied) upon the labeling and lack of labeling provided by Defendant, and the materiality of such labeling is established as a matter of state and federal Law. Defendant's concealment, misbranding and non-disclosure were intended to influence consumers' purchasing decisions and were done with reckless disregard for the rights of consumers. Plaintiff's and Class members' reliance was reasonably foreseeable by Defendant.

FOURTH CAUSE OF ACTION

COMMON LAW UNJUST ENRICHMENT

53. This Cause of Action is pled in the alternative to all contract-based claims and/or causes of action at law.

54. Defendant has received a benefit from Plaintiff and the Class Members in the form of the prices Plaintiff and the Class Members paid for Defendant's "organic" milk or milk products during the relevant time period.

55. Defendant is aware of its receipt of the above-described benefit.

56. Defendant received the above-described benefit to the detriment of Plaintiff and each of the other members of the Class.

57. Defendant continues to retain the above-described benefit to the detriment of Plaintiff and the Class Members.

58. Under the circumstances, it would be inequitable for Defendant to retain the above described benefit.

59. As a result of Defendant's unjust enrichment, Plaintiff and the Class Members have sustained damages in an amount to be determined at trial and seek full disgorgement and restitution of Defendant's enrichment, benefits, and ill-gotten gains acquired as a result of the unlawful or wrongful conduct alleged above.

FIFTH CAUSE OF ACTION

BREACH OF EXPRESS WARRANTY

60. Plaintiff hereby incorporates the preceding paragraphs by reference.

61. Aurora sold its “organic” milk or milk products to retailers who sold that milk or milk products to Plaintiff and the Class Members.

62. At all times relevant to this action, Defendant falsely represented that its milk or milk products were "organic" when they were not produced in compliance with the applicable organic certification requirements, laws, standards and regulations.

63. By its statements and representations about the "organic" status of its milk or milk products, Defendant warranted the production process and condition of that "organic" milk or milk products purchased by Plaintiff and the Class Members.

64. Defendant made these representations and warranty statements to induce Plaintiff and the Class Members to purchase Defendant's "organic" milk or milk products or was a material factor in the decision of Plaintiff and the Class Members to purchase the milk or the milk products.

1 65. Due to its conduct alleged herein, Defendant's "organic" milk or milk products
2 failed to conform to each of these warranties.

3 66. As a result of Defendant's conduct, Plaintiff and the Class Members have been
4 damaged.

5 67. Within a reasonable time after Plaintiff and the Class Members knew or should have
6 known of the failure to conform, Plaintiff, individually and on behalf of the Class, placed
7 Defendant on notice thereof.

SIXTH CAUSE OF ACTION

(California's Business & Professions Code §§ 17200, *et seq.*)

10 68. The preceding paragraphs of this Complaint are realleged and incorporated by
11 reference. Plaintiff asserts this claim for violations of California's UCL, Bus. & Prof. Code
12 §§ 17200, *et seq.*, on behalf of himself and the members of the Class.

13 69. Defendant's statements and representations constitute unfair, unlawful and
14 deceptive trade practices that have the capacity to and do deceive consumers, in violation of the
15 UCL.

16 70. All of the wrongful conduct alleged herein occurs and continues to occur in the
17 conduct of Defendant's business. Defendant's wrongful conduct is part of a pattern or generalized
18 course of conduct that is repeated in the State of California on hundreds, if not thousands, of
19 occasions daily.

71. Plaintiff has suffered injury in fact and has lost money or property as a result of
Defendant's unfair, unlawful and/or deceptive practices by paying a higher price for milk labeled
as organic that was not organic.

23 72. Plaintiff requests that this Court enter such orders or judgments as may be necessary
24 to enjoin the Defendant from continuing its unfair, unlawful, and/or deceptive practices, to restore
25 to any person in interest any money which may have been acquired by means of such unfair
26 competition and to disgorge any profits realized by Defendant as a result of its unfair, unlawful
27 and/or deceptive practices, as provided in Cal. Bus. & Prof. Code § 17203 and Cal. Civ.
28 Code § 3345, and for such other relief as set forth in the Prayer for Relief.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf all others similarly situated, respectfully requests that this Court enter a judgment against Defendant and in favor of Plaintiff, and grant the following relief:

A. Determine that this action may be maintained as a Class action with respect to a state-wide Consumer Class; that the court certify a class action with respect to particular issues if appropriate, and that the Court designate and appoint Plaintiff and her counsel to serve as Class Representative and Class Counsel;

B. Declare, adjudge and decree the conduct of the Defendant as alleged herein to be unlawful, unfair and/or deceptive;

C. Grant Plaintiff and all Class Members awards of actual, compensatory, punitive and/or exemplary damages in such amount to be determined at trial and as provided by applicable law;

D. Restore to Plaintiff and all Class Members all money or property which may have been acquired by means of such unfair competition and disgorgement all profits received by Defendant due to its unlawful, unfair and/or deceptive practices;

E. An injunction ordering Defendant to stop the unlawful, unfair and deceptive conduct alleged herein;

F. Grant Plaintiff and all Class Members awards of statutory damages, attorney's fees and costs;

G. Grant Plaintiff and the Class Members their costs of suit, including reasonable attorneys' fees, and expenses as provided by law; and

H. Grant Plaintiff and the Class Members such other, further, and different relief as the nature of the case may require or as may be determined to be just, equitable, and proper by this Court.

DEMAND FOR TRIAL BY JURY

Plaintiff, by counsel, requests a trial by jury on those causes of actions set forth herein.

DATED: January 11, 2008

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10 *Attorney for Defendant Safeway Inc.*

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**UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

THEADORA KING, individually, and
on behalf of those similarly situated,

CASE NO:

Plaintiff,

v.

SAFEWAY INC.,

**SAFEWAY INC.'S
LOCAL RULE 3-14 NOTICE OF
PENDENCY OF OTHER ACTIONS
OR PROCEEDINGS**

Defendant.

1 Defendant Safeway Inc. ("Safeway"), by its counsel, hereby provides,
 2 pursuant to Local Rule 3-14, notice of the pendency of other actions or
 3 proceedings. This action is related to several actions that are currently before the
 4 Judicial Panel on Multidistrict Litigation and other courts and that involve the use
 5 of the "USDA Organic" seal.

PARTIES	COURT
7 Plaintiffs: Kristine Mothershead and Leonie Lloyd, 8 individually and on behalf of all others similarly situated 9 Defendant: 10 Aurora Dairy Corporation d/b/a Aurora Organic Dairy	E.D. Missouri, Eastern Division Case No. 4:07-cv-01701-CAS
11 Plaintiffs: Maya Fiallos, individually and on behalf 12 of all others similarly situated 13 Defendant: 14 Aurora Dairy Corporation d/b/a Aurora Organic Dairy	S.D. Florida, Southern Division Case No. 1:07-cv-22748-AJ
15 Plaintiffs: Rebecca and Fernando Freyre, on behalf 16 of themselves and all others similarly situated 17 Defendant: 18 Aurora Dairy Corporation	D. Colorado Case No. 1:07-cv-02183-EWN-CBS
19 Plaintiffs: Mona Still, Helen Phillips, Eve Hana, 20 Jeanmarie Zirger, Kim King, Noelle Fincham, Oksana Jensen, Gabriela Waschewsky, Laurelanne Davis, Debbie Millikan, Joan Scheutz, Sandie Regan, Steve Shriver, Mary Elbertai, Eileen Ptak, Cynthia Roche-Cotter, Kristen Finnegan, Amy Forsman, Joy Beckner, Naomi Mardock, Olive Knaus, Liana Hoodes, Donita Robinson, Ilene Rachford, Lisa Hopkins, Caryn Poirier, Erin Diserens, Tammy Coselli, Debra Haines, Debra Schmidt, Hans Kueck 26 Defendant: 27 Aurora Dairy Corporation, d/b/a Aurora Organic Dairy	D. Colorado Case No. 1:07-cv-02188-WDM

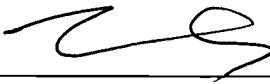
PARTIES	COURT
Plaintiff: Brenda Gallardo, an individual	N.D. California Case No. 3:07-cv-05331-MJJ
Defendant: Aurora Dairy Corporation d/b/a Aurora Organic Dairy	
Plaintiffs: Hillary White and Lynn Michalson, individually and on behalf of all others similarly situated	S.D. New York Case No. 07-CIV-9418
Defendant: Aurora Dairy Corporation d/b/a Aurora Organic Dairy	
Plaintiffs: Ilisa Lee Kaye, individually and on behalf of all others similarly situated	E.D. New York Case No. 2:07-cv-04425-DRH-ETB
Defendant: Aurora Dairy Corporation d/b/a Aurora Organic Dairy	
Plaintiffs: Elizabeth Cockrell, individually and on behalf of all others similarly situated	D. Colorado Case No. 1:07-cv-02285-LTB
Defendant: Aurora Dairy Corporation d/b/a Aurora Organic Dairy	
Plaintiffs: Jim Snell, Steve Clark, John Barrera, Joseph Villari, Elida Gollomp, Claire M. Theodore and Elisabeth Banse, on behalf of themselves and all other similarly situated	D. Colorado Case No. 07-cv-02449
Defendants: Aurora Dairy Corporation, d/b/a Aurora Organic Dairy, Wild Oats Market, Inc., Costco Wholesale Corporation, Safeway Inc., Wal-Mart Stores, Inc.	
Plaintiffs: Margot A. West, and Richard E. Ehly, individually and on behalf of a class of all others similarly situated	D. Colorado Case No. 1:07-cv-02625-JLK
Defendant: Aurora Dairy Corporation, d/b/a Aurora Organic Dairy	

	PARTIES	COURT
2	Plaintiff: Fayetta Cowan	S.D. Indiana Case No. 08-cv-00157-RLY-WTL
3	Defendants: Aurora Dairy Corporation, d/b/a Aurora Organic Dairy and Wal-Mart Stores, Inc.	
5	Plaintiff: Channing Hesse, individually and on behalf of a class of all others similarly situated	W.D. Washington (Seattle) Case No. 07-cv-01975-MJP
7	Defendant: Costco Wholesale Corporation	
9	Plaintiff: Shawn Riley, individually and on behalf of all others similarly situated	N.D. California (San Francisco) Case No. 07-cv-06174-JCS
11	Defendant: Safeway Inc.	
12	Plaintiffs: Patrick and Caryn Hudspeth, individually and on behalf of a class of all others similarly situated	D. Minnesota (St. Paul) Case No. 07-cv-04755-PJS-JJG
15	Defendant: Target Corp.	
16	Plaintiff: Vicki M. Tysseling-Mattiace, individually and on behalf of a class of all others similarly situated	D. Colorado (Denver) Case No. 07-cv-02622-WYD-BNB
18	Defendant: Wild Oats Markets, Inc.	
20	Plaintiff: Paul Bowen, individually and on behalf of all others similarly situated	E.D. Arkansas (Little Rock) Case No. 08-cv-00010-JLH
22	Defendant: Wal-Mart Stores, Inc.	
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PARTIES	COURT
2 Plaintiff: 3 Nicolle DiSimone, individually and on behalf of those similarly situated	C.D. California
4 Defendants: 5 Aurora Dairy Corporation, doing business as Aurora Organic Dairy, Case 6 Vander Eyk, Jr., doing business as Case Vander Eyk, Jr. Dairy, QAI, Inc., doing 7 business as Quality Assurance International, and DOES 1-100, inclusive	Case No. 08-0746-DSF-VBK

8 Dated: February 19, 2008

9 Respectfully submitted,

10 COUNSEL FOR DEFENDANT
11 SAFEWAY INC.12 By: 13 LATHAM & WATKINS LLP
14 Viviann C. Stapp (Bar No. 233036)
15 505 Montgomery Street, Suite 2000
16 San Francisco, California 94111
17 Telephone: (415) 391-0600
Facsimile: (415) 395-8095
Email: viviann.stapp@lw.com18
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1 LATHAM & WATKINS LLP
2 Viviann C. Stapp (Bar No. 233036)
3 505 Montgomery Street, Suite 2000
4 San Francisco, California 94111
5 Telephone: (415) 391-0600
6 Facsimile: (415) 395-8095
7 Email: viviann.stapp@lw.com

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Attorney for Defendant Safeway Inc.

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UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

THEADORA KING, individually, and on
behalf of those similarly situated,

CASE NO:

Plaintiff,

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DECLARATION OF LAURA A. DONALD

v.
SAFEWAY INC.,

Defendant.

1 I, Laura A. Donald, do hereby declare as follows:

2 1. I am Assistant Vice President and Assistant Secretary at Safeway Inc.

3 ("Safeway"). I make this declaration based upon my personal knowledge and review of available
4 documentation.

5 2. I am knowledgeable concerning the amount and value of Safeway's sales of milk
6 provided to Safeway by Aurora Dairy Corporation ("Aurora").

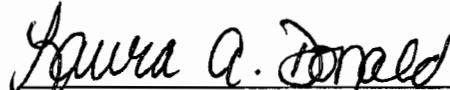
7 3. I am also knowledgeable concerning the location of Safeway retail stores in
8 California.

9 4. During the class period alleged in Plaintiff's Complaint (*i.e.*, December 5, 2003
10 through October 15, 2007), Safeway sold more than \$5 million worth of milk supplied by Aurora
11 in California, as measured by the retail price members of the proposed class would have paid.

12 5. Safeway has many stores in California which are close to, or encroach upon, the
13 borders of other states (*e.g.*, Lake Tahoe, California). These stores obtained organic milk supplied
14 by Aurora through Safeway's distribution center in California. Citizens of other states (*e.g.*,
15 Nevada) purchase milk from these stores.

16 I declare under penalty of perjury that the foregoing is true and correct to the best of my
17 knowledge, information and belief.

18 Dated: February 19, 2008


Laura A. Donald

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DECLARATION OF LAURA A. DONALD]

Attorney or Party without Attorney: SHANA E. SCARLETT ESQ, Bar #217895 HAGENS, BERMAN, SOBOL, SHAPIRO 715 HEARST AVENUE, STE 202 BERKELEY, CA 94710 Telephone No: 510-725-3000 FAX No: 510-725-3001	
Attorney for: Plaintiff	
Insert name of Court, and Judicial District and Branch Court: ALAMEDA County SUPERIOR Court NORTHERN DIVISION Branch	
Plaintiff: KING	
Defendant: SAFEWAY	
PROOF OF SERVICE SUMMONS & COMPLAINT	Hearing Date: _____ Time: _____ Dept/Div: _____ Case Number: _____ RG08365602

6048235

 For Court Use Only

FILED
ALAMEDA COUNTY

JAN 22 2008

Karen O'Neil
CLERK OF THE SUPERIOR COURT

Deputy

1. At the time of service I was at least 18 years of age and not a party to this action.
2. I served copies of the SUMMONS (AND) COMPLAINT; , CIVIL CASE COVER SHEET
3. a. Party served: SAFEWAY, INC.
b. Person served: BECKY DEGEORGE, AGENT FOR SERVICE
4. Address where the party was served: CSC
2730 GATEWAY OAKS DRIVE, STE 100
SACRAMENTO, CA 95833
5. I served the party:
a. by personal service. I personally delivered the documents listed in Item 2 to the party or person authorized to receive service of process for the party (1) on: Thu., Jan. 17, 2008 (2) at: 2:05PM
6. The "Notice to the Person Served" (on the Summons) was completed as follows:
a. as an individual defendant
7. Person Who Served Papers:
a. PHIL OLIVAS

ONE HOUR LEGAL
1280 BOULEVARD WAY #205 WALNUT CREEK, CA 94595 (925) 947-3470 FAX (925) 947-3480 WWW.ONEHOUR.NET
- Recoverable Cost Per CCP 1033.5(a)(4)(B)
d. The Fee for Service was: \$74.60
e. I am: (3) registered California process server
 - (i) Employee
 - (ii) Registration No.: #93-027
 - (iii) County: SACRAMENTO
8. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: Fri, Jan. 18, 2008

Judicial Council Form POS-010
Rule 2.150.(a)&(b) Rev January 1, 2007

PROOF OF SERVICE
SUMMONS & COMPLAINT

(PHIL OLIVAS)

hagess.10134



CM-010

6047659

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):

Shana E. Scarlett, SBN 217895
 Hagens Berman Sobol Shapiro LLP
 715 Hearst Ave., Suite 202

TELEPHONE NO.: (510) 725-3000

FAX NO.: (510) 725-3001

ATTORNEY FOR (Name): Plaintiff Teddy King

SUPERIOR COURT OF CALIFORNIA, COUNTY OF Alameda

STREET ADDRESS: 1225 Fallon St.

MAILING ADDRESS: 1225 Fallon St.

CITY AND ZIP CODE: Oakland, CA 94612

BRANCH NAME: René C. Davidson Alameda County Courthouse

CASE NAME:

King v. Safeway, Inc.

FILED
 ALAMEDA COUNTY

JAN 11 2008

CLERK OF THE SUPERIOR COURT

 CASE NUMBER: 08-365602
King v. Safeway, Inc.

CIVIL CASE COVER SHEET

Unlimited Limited
 (Amount demanded exceeds \$25,000) (Amount demanded is \$25,000 or less)

Complex Case Designation

Counter Joinder

Filed with first appearance by defendant
 (Cal. Rules of Court, rule 3.402)

By:

CASE NUMBER:

JUDGE:

DEPT:

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort

Auto (22)
 Uninsured motorist (46)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)
 Product liability (24)
 Medical malpractice (45)
 Other PI/PD/WD (23)

Non-PI/PD/WD (Other) Tort

Business tort/unfair business practice (07)
 Civil rights (08)
 Defamation (13)
 Fraud (16)
 Intellectual property (19)
 Professional negligence (25)
 Other non-PI/PD/WD tort (35)

Employment

Wrongful termination (36)
 Other employment (15)

Contract

Breach of contract/warranty (06)
 Rule 3.740 collections (09)
 Other collections (09)
 Insurance coverage (18)
 Other contract (37)

Real Property

Eminent domain/inverse condemnation (14)
 Wrongful eviction (33)
 Other real property (26)

Unlawful Detainer

Commercial (31)
 Residential (32)
 Drugs (38)

Judicial Review

Asset forfeiture (05)
 Petition re: arbitration award (11)
 Writ of mandate (02)
 Other judicial review (39)

Provisionally Complex Civil Litigation
 (Cal. Rules of Court, rules 3.400-3.403)

Antitrust/Trade regulation (03)
 Construction defect (10)
 Mass tort (40)
 Securities litigation (28)
 Environmental/Toxic tort (30)
 Insurance coverage claims arising from the above listed provisionally complex case types (41)

Enforcement of Judgment

Enforcement of Judgment (20)

Miscellaneous Civil Complaint

RICO (27)
 Other complaint (not specified above) (42)

Miscellaneous Civil Petition

Partnership and corporate governance (21)
 Other petition (not specified above) (43)

2. This case is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

- a. Large number of separately represented parties d. Large number of witnesses
 b. Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve e. Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
 c. Substantial amount of documentary evidence f. Substantial postjudgment judicial supervision

3. Remedies sought (check all that apply): a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive

4. Number of causes of action (specify): 6: UCL, CLRA, False adv., Negl., Misrep., Unjust enrich., Breach Exp. Warr.

5. This case is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date:

Shana E. Scarlett

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

SUMMONS
(CITACION JUDICIAL)

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):
Safeway, Inc.

YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):
Theadora King

M-100
6047651
(SOLO PARA USO DE LA CORTE)

FILED ALAMEDA COUNTY JAN 11 2008 CLERK OF THE SUPERIOR COURT By <i>René C. Davidson</i> Deputy

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/sefhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/sefhelp), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/sefhelp/espanol), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/sefhelp/espanol) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:
(El nombre y dirección de la corte es):

René C. Davidson Alameda County Courthouse
1225 Fallon St.,
Oakland, CA 94612

CASE NUMBER: **VC08365602**
(Número del Caso)

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Shana E. Scarlett, Hagens Berman Sobol Shapiro, LLP,
715 Hearst Avenue, Suite 202, Berkeley, CA 94710

DATE: **JAN 11 2008** **PAT S. SWEETEN** Clerk, by *René C. Davidson*, Deputy
(Fecha) (Secretario) (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

NOTICE TO THE PERSON SERVED: You are served

1. as an individual defendant.
2. as the person sued under the fictitious name of (specify):

3. on behalf of (specify): Safeway, Inc.

under: CCP 416.10 (corporation) CCP 416.60 (minor)
 CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
 CCP 416.40 (association or partnership) CCP 416.90 (authorized person)
 other (specify):

4. by personal delivery on (date):





6048239

1 Shana E. Scarlett (217895)
 2 HAGENS BERMAN SOBOL SHAPIRO LLP
 3 715 Hearst Avenue, Suite 202
 Berkeley, CA 94710
 Telephone: (510) 725-3000
 Facsimile: (510) 725-3001
 shanas@hbsslaw.com

5 Steve W. Berman
 6 HAGENS BERMAN SOBOL SHAPIRO LLP
 1301 Fifth Avenue, Suite 2900
 Seattle, WA 98101
 7 Telephone: (206) 623-7292
 Facsimile: (206) 623-0594
 steve@hbsslaw.com

9 Elizabeth A. Fegan
 10 HAGENS BERMAN SOBOL SHAPIRO LLP
 820 North Boulevard, Suite B
 Oak Park, IL 60301
 11 Telephone: (708) 776-5600
 Facsimile: (708) 776-5601
 beth@hbsslaw.com

13 Attorneys for Plaintiff

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 15 COUNTY OF ALAMEDA

17 THEADORA KING, individually and on behalf) No. RG 08365602
 18 of all others similarly situated,)

19 Plaintiff,) PROOF OF SERVICE

20 v.)

21 SAFEWAY, INC.,) Hon. Cecilia P. Castellanos
 22 Defendant.)

ORIGINAL

1 I, the undersigned, declare:

2 1. That declarant is and was, at all times herein mentioned, a citizen of the United
3 States and is employed in the city of Berkeley, California, over the age of 18 years, and not a party
4 to or interested in the within action; that declarant's business address is 715 Hearst Avenue, Suite
5 202, Berkeley, California 94710.

6 2. That on January 22, 2008, declarant served the following documents by overnight
7 delivery by placing a true copy thereof in a sealed envelope addressed to the parties listed on the
8 attached Service List:

- 9 • Notice of Case Management Conference and Order;
10 • Notice of Judicial Assignment for All Purposes

11 3. That there is a regular communication by mail between the place of mailing and the
12 places so addressed.

13 I declare under penalty of perjury that the foregoing is true and correct. Executed this 22nd
14 day of January, 2008, at Berkeley, California.

15 
16 _____
17 KIRSTEN ERICKSON

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King v. Safeway, Inc.
Superior Court of California, County of Alameda
Case No. RG 08365602
January 22, 2008

Counsel for Defendant Safeway, Inc.

Registered Agent:

Corporation Service Company
2730 Gateway Oaks Drive, Suite 100
Sacramento, CA 95833

Hafens Berman Sobal Shapiro LLP
 Attn: Scarlett, Shana E.
 715 Hearst Ave
 Ste 202
 Berkeley, CA 94710-

Superior Court of California, County of Alameda

King Plaintiff/Petitioner(s) vs. Safeway, Inc.	No. <u>RG08365602</u> NOTICE OF CASE MANAGEMENT CONFERENCE AND ORDER Unlimited Jurisdiction
Defendant/Respondent(s) (Abbreviated Title)	

TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD.

Notice is given that a Case Management Conference has been scheduled as follows:

Date: 05/29/2008	Department: 18	Judge: Cecilia P. Castellanos
Time: 08:30 AM	Location: Administration Building Third Floor 1221 Oak Street, Oakland CA 94612	Clerk: May Choo Clerk telephone: (510) 267-6934 E-mail: Dept.18@alameda.courts.ca.gov Fax: (510) 267-1506
	Internet: http://www.alameda.courts.ca.gov	

ORDERS

1. You must:
 - a. Serve all named defendants and file proofs of service on those defendants with the court within 60 days of the filing of the complaint (CRC 3.110(b));
 - b. Give notice of this conference to any party not included in this notice and file proof of service;
 - c. Meet and confer, in person or by telephone, to consider each of the issues identified in CRC 3.724 no later than 30 calendar days before the date set for the Case Management Conference;
 - d. File and serve a completed Case Management Conference Statement (use of Judicial Council Form CM 110 is mandatory) at least 15 days before the Case Management Conference (CRC 3.725)
2. If you do not follow the orders above, you are hereby ordered to show cause why you should not be sanctioned under CRC 2.30. The hearing on the Order to Show Cause re: Sanctions will be at the same time as the Case Management Conference. Sanctions may include monetary sanctions and any other sanction permitted by law, including striking pleadings or dismissing the action.
3. You are further ordered to appear in person* (or through your attorney of record) at the Case Management Conference noticed above. You must be thoroughly familiar with the case and fully authorized to proceed.
4. The Direct Calendar Judge will issue orders at the conclusion of the conference that should include:
 - a. Referring to ADR and setting an ADR completion date
 - b. Dismissing or severing claims or parties
 - c. Setting a trial date.

*Telephonic appearances at Case Management Conferences may be available by contacting CourtCall, an independent vendor, at least 3 business days prior to the scheduled conference. Parties may make arrangements by calling 1-888-882-6878, or faxing a service request to 1-888-882-2946. This service is subject to charges by the vendor.

CLERK'S CERTIFICATE OF MAILING

I certify that the following is true and correct: I am the clerk of the above-named court and not a party to this cause. I served this Notice of Hearing by placing copies in envelopes addressed as shown hereon and then by sealing and placing them for collection, stamping or metering with prepaid postage, and mailing on the date stated below, in the United States mail at Alameda County, California, following standard court practices.

Executed on 01/17/2008.

By



Deputy Clerk

Superior Court of California, County of Alameda



Notice of Judicial Assignment for All Purposes

Case Number: RG08365602
Case Title: King VS Safeway, Inc.
Date of Filing: 01/11/2008

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

This case is hereby assigned for all purposes to:

Judge:	Cecilia P. Castellanos
Department:	18
Address:	Administration Building 1221 Oak Street Oakland CA 94612
Phone Number:	(510) 267-6934
Fax Number:	(510) 267-1506
Email Address:	Dept.18@alameda.courts.ca.gov

Under direct calendaring, this case is assigned to a single judge for all purposes including trial.

Please note: In this case, any challenge pursuant to Code of Civil Procedure §170.6 must be exercised within the time period provided by law. (See Govt. Code 68616(i); Motion Picture and Television Fund Hosp. v. Superior Court (2001) 88 Cal.App.4th 488, 494; and Code Civ. Proc. §1013.)

IT IS THE DUTY OF EACH PLAINTIFF AND CROSS COMPLAINANT TO SERVE A COPY OF THIS NOTICE IN ACCORDANCE WITH LOCAL RULE 3.135.

General Procedures

All pleadings and other documents must be filed in the clerk's office at any court location except when the Court permits the lodging of material directly in the assigned department. All documents, with the exception of the original summons and the original civil complaint, shall have clearly typed on the face page of each document, under the case number, the following:

ASSIGNED FOR ALL PURPOSES TO
JUDGE Cecilia P. Castellanos
DEPARTMENT 18

Counsel are expected to know and comply with the Local Rules of this Court, which are available on the Court's website at:
<http://www.alameda.courts.ca.gov/courts/rules/index.shtml> and with the California Rules of Court, which are available at www.courtinfo.ca.gov.

The parties are always encouraged to consider using various alternatives to litigation, including mediation and arbitration, prior to the Initial Case Management Conference. The Court may refer parties to alternative dispute resolution resources.

Schedule for Department 18

The following scheduling information is subject to change at any time, without notice. Please contact the department at the phone number or email address noted above if you have questions.

- Trials generally are held: Mondays, Tuesdays, Wednesdays and Thursdays from 9:30 a.m. to 4:30 p.m.
- Case Management Conferences are held: Initial Case Management Conferences: Tuesdays, Wednesdays, Thursdays at 8:30 a.m.
- Case Management Conference Continuances: Monday through Friday at 8:45 a.m.
- Law and Motion matters are heard: Tuesdays at 4:00 p.m. and Fridays at 1:30 p.m.
- Settlement Conferences are heard: Fridays at 9:30 a.m.
- Ex Parte matters are heard: Tuesdays and Thursdays at 9:00 a.m.

Law and Motion Procedures

To obtain a hearing date for a Law and Motion or ex parte matter, parties must contact the department as follows:

- Motion Reservations
Email: Dept.18@alameda.courts.ca.gov

For all Law & Motion reservations, email Department 18 at the email address provided or fax the request to (510) 267-6990

- Ex Parte Matters
Email: Dept.18@alameda.courts.ca.gov
FAX: (510)267-6990

Tentative Rulings

The court will issue tentative rulings in accordance with the Local Rule 3.30(c). Tentative rulings will become the Court's order unless contested. Tentative rulings will be available at:

- Website: www.alameda.courts.ca.gov/domainweb, Calendar Information for Dept. 18
- Phone: 1-866-223-2244

Dated: 01/16/2008

Executive Officer / Clerk of the Superior Court

By



Deputy Clerk

CLERK'S CERTIFICATE OF MAILING

I certify that the following is true and correct: I am the clerk of the above-named court and not a party to this cause. I served this Notice by placing copies in envelopes addressed as shown on the attached Notice of Initial Case Management Conference and then by sealing and placing them for collection, stamping or metering with prepaid postage, and mailing on the date stated below, in the United States mail at Alameda County, California, following standard court practices.

Executed on 01/17/2008

By



Deputy Clerk

PROOF OF SERVICE

I am employed in the County of San Francisco, State of California. I am over the age of 18 years and not a party to this action. My business address is Latham & Watkins LLP, 505 Montgomery Street, Suite 2000, San Francisco, California 94111.

On **February 19, 2008**, I served the following documents described as:

SAFEWAY INC.'S NOTICE OF REMOVAL WITH EXHIBITS AND CIVIL COVER SHEET

**SAFEWAY INC.'S CERTIFICATION OF INTERESTED ENTITIES
AND F.R.C.P. 7.1 DISCLOSURES**

**SAFEWAY INC.'S LOCAL RULE 3-14 NOTICE OF PENDENCY OF OTHER
ACTIONS OR PROCEEDINGS**

by serving a true copy of the above-described document in the following manner:

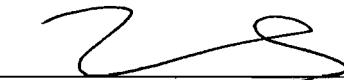
BY U.S. MAIL

I am familiar with the office practice of Latham & Watkins LLP for collecting and processing documents for mailing with the United States Postal Service. Under that practice, documents are deposited with the Latham & Watkins LLP personnel responsible for depositing documents with the United States Postal Service; such documents are delivered to the United States Postal Service on that same day in the ordinary course of business, with postage thereon fully prepaid. I deposited in Latham & Watkins LLP's interoffice mail a sealed envelope or package containing the above-described document and addressed as set forth below in accordance with the office practice of Latham & Watkins LLP for collecting and processing documents for mailing with the United States Postal Service.

SEE ATTACHED SERVICE LIST

I declare that I am employed in the office of a member of the Bar of, or permitted to practice before, this Court at whose direction the service was made and declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on **February 19, 2008**, at San Francisco, California.



Viviann C. Stapp

SERVICE LIST

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